

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY,)

Plaintiff)

v.)

ADP MARSHALL, INC., a FLUOR DANIEL COMPANY, and)
FIREMAN'S FUND INSURANCE COMPANY,)

Defendants)

) CIVIL ACTION
) NO. 04-CV-10203-PBS

ADP MARSHALL, INC.,)

Plaintiff-in-Counterclaim,)

v.)

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY,)

Defendant-in-Counterclaim)

ADP MARSHALL, INC.,)

Third-Party Plaintiff)

v.)

ALLIED CONSULTING ENGINEERING SERVICES, et al.)

Third-Party Defendants)

**OBJECTIONS OF THIRD-PARTY DEFENDANT,
SPAGNOLO/GISNESS & ASSOCIATES, INC. TO
ADP MARSHALL, INC.'S PRETRIAL DISCLOSURES**

Third-party defendant, Spagnolo/Gisness & Associates, Inc. (“SGA”) hereby objects to the witnesses and exhibits set forth in the Pretrial Disclosure of the third-party plaintiff, ADP Marshall, Inc. (“ADPM”).

OBJECTIONS TO WITNESSES

SGA objects to the proposed testimony of ADPM’s intended witnesses – Robert Greetham, Brian Metcalf, and Tom Hughes. ADPM has disclosed that these witnesses will provide opinion testimony on the architectural concerns enumerated in Stephen Wessling’s report. These witnesses have not been disclosed as experts and, therefore, they should not be permitted to offer any opinion testimony. Accordingly, SGA objects to any testimony of these witnesses that attempts to characterize Mr. Wessling’s report and is not based on personal knowledge. In addition, SGA objects to any testimony of these witnesses concerning the contractual obligations of the subcontractors. The subcontracts will be exhibits at trial and can speak for themselves. Testimony concerning the contractual obligations of the subcontractors would be incompetent, would confuse the jury, would be unfairly prejudicial and cause undue delay through needless presentation of cumulative evidence.

OBJECTIONS TO PLAINTIFF’S EXHIBITS

SGA objects to the admission of the following exhibits:

7. Objection for failure to comply with Fed. R. Civ. P. 26(a)(3)(C) for vagueness of description. SGA further objects on grounds of Fed. R. Evid. 901.
27. Objection for failure to comply with Fed. R. Civ. P. 26(a)(3)(C) for vagueness of description. SGA further objects on grounds of Fed. R. Evid. 901.
39. Objection for failure to comply with Fed. R. Civ. P. 26(a)(3)(C) for vagueness of description. SGA further objects on grounds of Fed. R. Evid. 901.

40. Objection for failure to comply Fed. R. Civ. P. 26(a)(3)(C) for vagueness of description. SGA further objects on grounds of Fed. R. Evid. 901.

As addressed in SGA's motion to preclude, ADPM failed to produce any documents in response to SGA's document requests. Consequently, SGA has had an opportunity to view the majority of the exhibits listed in ADPM's pretrial disclosures. ADPM's failure to produce the requested documents is not harmless as its failure has prevented SGA from adequately preparing for trial. Because SGA does not know the content of these exhibits, SGA objects to the admissibility of these exhibits.

OBJECTIONS TO PLAINTIFF'S POSSIBLE EXHIBITS

3. Objection on grounds of Fed. R. Evid. 901.

Respectfully submitted,
SPAGNOLO/GISNESS &
ASSOCIATES, INC.
By its attorneys,

/s/ Carly B. Goldstein
David J. Hatem, PC, BBO #225700
Warren D. Hutchison, BBO #246150
Carly B. Goldstein, BBO #654731
DONOVAN HATEM LLP
Two Seaport Lane
Boston, MA 02210
(617) 406-4500

Date: July 8, 2005

CERTIFICATE OF SERVICE

I, Carly B. Goldstein, Esquire, hereby certify that on this 8th day of July, 2005, I served the attached *Motion to Preclude By Third-Party Defendant*, Spagnolo/Gisness & Associates, Inc. by mailing a copy thereof, post prepaid, to:

Andrew J. Tine, Esquire Glenn H. Haese, Esquire Richard J. Fox, Esquire Haese, LLC 30 Federal Street, Suite 301 Boston, MA 02210	John J. McNamara, Esquire Eric A. Howard, Esquire Domestico, Lane & McNamara, LLP 161 Worcester Road, Suite 302 Framingham, MA 01701
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/s/ Carly B. Goldstein _____

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